

IN THE HIGH COURT OF JUDICATURE AT BOBBY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 4119 OF 2004

Kusum Maruti @ Baban Mhaske ..Applicant.

V/s.

The State of Maharashtra .. Respondent.

 Shri R.D. Suryawanshi for Applicant.

Shri V.B. Konde-Deshmukh, APP for Respondent.

CORAM : A.M.KHANWILKAR, J.

DATED : 12.10.2004

PC :-

. Heard the learned counsel for the parties.
 Perused the record.

. The applicant is arrested in connection with offence punishable under sections 22 and 27 of the NDPS Act, as during the raid conducted at the residence of the applicant, 22 kgs of Ganja, worth Rs. 3770/- was found. However, the facts which are not disputed and can be culled out from the record are that :-

(a) the search was conducted after sun set at
 8.30 p.m.

(b) no search warrant was issued much less to conduct the raid after sun set.

(c) the concerned officer has not recorded reasons for his belief in terms of proviso to section 42 (1) of the NDPS Act.

As these facts are undisputed and the learned APP fairly accepts the same, it necessarily follows that the recovery of ganja becomes doubtful and that is fatal because of the non-compliance of the mandatory requirement of section 42 (1) of the NDPS Act. If it is so, there are reasons to believe that the Applicant is not guilty of the alleged offence. Accordingly, the Applicant deserves to be enlarged on bail on the following conditions :-

Applicant is enlarged on bail in connection with C.R.No.II-3195/2004, registered with Bhiwandi Town Police Station, Bhiwandi on executing personal bond in the sum of Rs. 1,00,000/- (Rs. One lakh only) with one or two local sureties in the like amount.

The Applicant shall not leave the jurisdiction

of Bhiwandi Town Police Station without prior permission of the trial court.

The Applicant shall extend full co-operation for early disposal of the trial. If the trial court is of the opinion that the applicant is responsible for delay in trial that fact be recorded in the Rozanama, which can be a ground for cancellation of bail.

The applicant shall not influence the prosecution witness or tamper with the prosecution evidence in any manner whatsoever.

. Order accordingly.

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